

The purchase of tangible personal property that is transferred to service customers of an auto body shop may result in either Service Occupation Tax liability or Use Tax liability for the servicemen. 86 Ill. Adm. Code 140.101 (This is a GIL).

March 29, 2002

Dear Xxxxx:

This letter is in response to your letter dated January 15, 2002. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See, 2 Ill. Adm. Code 1200.120 subsections (b) and (c), which can be found at <http://www.revenue.state.il.us/legalinformation/regs/part1200>.

In your letter, you have stated and made inquiry as follows:

I am writing in order to seek guidance regarding whether Retailers Occupation Tax must be charged under the following set of circumstances.

Automobile dealers buy shop supplies for use in the service function. This may include rags, cleaners, solvents etc. These supplies are not attached to the vehicle as part of the service function as a part would be. Dealers either assess a certain percentage on each repair order or a flat dollar amount in order to provide for a reimbursement of this expense.

Dealers remit Retailers Occupation Tax to the vendor upon the purchase of these supplies. They do not assess ROT on the amount charged back to their customers. Our experience upon IDOR exam indicates that this is the correct treatment. In addition, I have included Private Letter Ruling ST 91-0019-PLR as support for the Department's position on this issue, at least as it existed in 1991.

Recently, we have seen trade publication material which indicates that not only does the dealer pay ROT to the vendor, but he must also collect ROT from his customer based on the amount assessed on the repair order to cover the charge for shop supplies.

Since this does not appear to be addressed specifically in the Regulations, I am seeking information as to whether the Department's position on this issue has recently changed.

Your time and attention towards this matter is greatly appreciated.

A serviceman, such as an automobile repairman, incurs Use Tax on items such as towels, rags, reducers, abrasives, and other items he consumes during a repair job. These items cannot be

purchased for resale because they are not transferred to service customers. The Use Tax is incurred on the privilege of using tangible personal property purchased anywhere at retail from a retailer.

Retailers' Occupation Tax and Use Tax apply to sales and use of tangible personal property, not to sales of service. Repairmen incur liability under the Service Occupation Tax when performing repair jobs. Under this Act, a serviceman is taxed on the tangible personal property transferred incident to sales of service. For your general information we have enclosed a copy of 86 Ill. Adm. Code 140.101 regarding sales of service and Service Occupation Tax.

Under the Service Occupation Tax Act, the purchase of tangible personal property that is transferred to service customers may result in either Service Occupation Tax liability or Use Tax liability for the servicemen, depending upon which tax base the servicemen choose to calculate their liability. Servicemen may calculate their tax base in one of four ways: (1) separately state the selling price of the tangible personal property being transferred; (2) calculate 50% of the entire bill; (3) Service Occupation Tax on the cost price of the tangible personal property being transferred if they are registered de minimis servicemen; or, (4) Use Tax on the cost price of the tangible personal property being transferred if the servicemen are de minimis and are not otherwise required to be registered under Section 2a of the Retailers' Occupation Tax Act.

Using the first method, servicemen may separately state the selling price of each item transferred as a result of sales of service. The tax is based on the separately stated selling price of the tangible personal property transferred.

Under the second method, if servicemen do not wish to separately state the selling price of the tangible personal property transferred, those servicemen must use 50% of the entire bill to their customers as a tax base. Both of the above methods provide that in no event may the tax base be less than the serviceman's cost price of the tangible personal property transferred. Under these methods, servicemen may provide their suppliers with Certificates of Resale when purchasing the tangible personal property to be transferred as part of the sales of service.

The third way a servicemen may account for their tax liability only applies to de minimis servicemen who have either chosen to be registered or are required to be registered because they incur Retailers' Occupation Tax liability with respect to a portion of their business. Servicemen may qualify as de minimis if they determine that their annual aggregate cost price of tangible personal property transferred incident to sales of service is less than 35% of their annual gross receipts from service transactions (75% in the case of pharmacists and persons engaged in graphic arts production). See 86 Ill. Adm. Code 140.105. This class of registered de minimis servicemen is tangible personal property transferred incident to sales of service. They remit the tax to the Department by filing returns and do not pay tax to suppliers. They provide suppliers with Certificates of Resale for the property transferred to service customers.

The final method of determining tax liability may be used by de minimis servicemen that are not otherwise required to be registered under Section 2a of the Retailers' Occupation Tax Act. Servicemen may qualify as de minimis if they determine that their annual aggregate cost price of tangible personal property transferred incident to sales of service is less than 35% of their annual gross receipts from service transactions (75% in the case of pharmacists and persons engaged in graphic arts production). Such de minimis servicemen may pay Use Tax to their suppliers or may self-assess and remit Use Tax to the Department when making purchases from unregistered out-of-State suppliers. They do not provide suppliers with Certificates of Resale. These servicemen are not authorized to collect "tax" from their service customers, nor are they liable for Service Occupation Tax. It should be noted that servicemen no longer have the option of determining whether they are de minimis using a transaction by transaction basis.

As you can see, a serviceman making purchases of products that will be transferred to his customers will either purchase those products for resale or use, depending upon which of the above methods he uses to calculate his tax liability.

I hope this information is helpful. The Department of Revenue maintains a Web site, which can be accessed at www.revenue.state.il.us. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of Section 1200.110(b).

Very truly yours,

Shane McCreery

By:

Jerilynn T. Gorden

Senior Counsel – Sales and Excise Taxes

SM:JTG:msk
Enc.